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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. W-100]

Final Policy Concerning the Occupational Safety and Health Administration's Treatment of Voluntary Employer Safety and Health Self-Audits

AGENCY: Occupational Safety and Health Administration, USDOL.

ACTION: Notice of final policy

Authority: Sec. 8(a) and 8(b), Pub. L. 91-596, 84 Stat. 1599 (29 U.S.C. 657)

SUMMARY: The Occupational Safety and Health Administration (OSHA) has developed a final policy describing the Agency's treatment of voluntary employer self-audits that assess workplace safety and health conditions, including compliance with the Occupational Safety and Health Act (Act). The policy provides that the Agency will not routinely request self-audit reports at the initiation of an inspection, and the Agency will not use self-audit reports as a means of identifying hazards upon which to focus during an inspection. In addition, where a voluntary self-audit identifies a hazardous condition, and the employer has corrected the violative condition prior to the initiation of an inspection (or a related accident, illness, or injury that triggers the OSHA inspection) and has taken appropriate steps to prevent the recurrence of the condition, the Agency will refrain from issuing a citation, even if the violative condition existed within the six month limitations period during which OSHA is authorized to issue citations. Where a voluntary self-audit identifies a hazardous condition, and the employer promptly undertakes appropriate measures to correct the violative condition and to provide interim employee protection, but has not completely corrected the violative condition when an OSHA inspection occurs, the Agency will treat the audit report as evidence of good faith, and not as evidence of a willful violation of the Act.

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SUPPLEMENTARY INFORMATION:

I. Background Information

On October 6, 1999, OSHA published a "Proposed Policy Statement Concerning the Occupational Safety and Health Administration's Use of Voluntary Employer Safety and Health Self-Audits" in the **Federal Register**. 64 FR 54358 (1999). The policy statement described the Agency's proposal regarding the manner in which it would treat voluntary employer self-audits that assess workplace safety and health conditions, including compliance with the Act. The proposed policy statement provided that the Agency would not routinely request voluntary employer self-audit reports at the initiation of an inspection. Further, the proposed policy provided that, where an employer identified a hazardous condition through a voluntary self-audit, and the employer promptly undertook appropriate corrective measures, OSHA would treat the audit report as evidence of good faith, and not as evidence of a willful violation. It was, and remains, the Agency's intention to develop and implement a policy that recognizes the value of voluntary self-audit programs that are designed to allow employers, or their agents, to identify and promptly correct hazardous conditions. In limited situations, however, documentation related to voluntary self-audits plays an important role in the Agency's ability to effectively and faithfully carry out its inspection and enforcement obligations under the Act.

Although the Agency is not required by the Administrative Procedures Act, 5 U.S.C. 551, et seq., to engage in notice and comment rulemaking procedures prior to the adoption and implementation of this policy, OSHA requested public comment regarding its proposed policy statement in order to gain input and insight from employers, employees, employee representatives, and other interested parties. OSHA received and thoroughly reviewed comments from a variety of sources. The Agency has modified the proposed policy to incorporate those comments that further OSHA's dual purposes in proposing the voluntary self-audit policy -- i.e., to provide appropriate, positive treatment that is in accord with the value that voluntary self-audits have for employers' safety and health compliance efforts, while maintaining the Agency's authority to gain access to voluntary self-audit documentation in limited circumstances in which access is important to effectively and faithfully enforce the Act. The Agency has not incorporated those comments that it considered to be contrary to its purposes in proposing this policy or that it considered to be beyond the scope of its intent in proposing the policy.

II. Substantive Modifications to the Proposed Policy

Based upon input that the Agency received from interested parties, OSHA has made several substantive changes to its proposed policy on the treatment of voluntary employer self-audits.

1. Modifications to Certain Definitions in the Policy

In the final policy, the Agency has defined the term "self-audit" to include health and safety audits conducted for an employer by a third party. In addition, in defining the terms "systematic" and "documented," the Agency has added the words "or for" before the phrase "the employer" to clarify that an audit conducted by a third party for an employer is covered by the final policy. OSHA values the role that independent safety and health professionals play in furthering occupational safety and health and encourages employers to utilize their services when appropriate.

The Agency has changed the definition of the word "objective" by deleting reference to "safety and health professional[s]" and by broadening the class of persons who may conduct an "objective" self-audit to include competent employees and management officials. Thus, in the final policy, a self-audit is "objective" if it is conducted "by or under the direction of an individual or group of individuals who are competent to identify workplace safety or health hazards, given the scope and complexity of the processes under review." This modification is responsive to suggestions from small business employers, organizations such as the National Advisory Committee on Occupational Safety and Health, and other members of the public. Employers, particularly small business employers, who might not have the financial resources to hire an independent consultant, may use their own personnel who do not have professional certification, but who do have the necessary experience or training to conduct an effective and thorough self-audit. In addition, the Agency recognizes the expertise that many joint labor-management safety committees have developed with respect to workplace safety and health issues and acknowledges that audits conducted by such committees should qualify for recognition under this policy.

2. Training for Compliance Safety and Health Officers

In the final policy, the Agency has added the following statement: "All OSHA personnel applying this policy will receive instruction in order to ensure the consistent and appropriate application of the policy." The Agency received comments from employers expressing their concerns regarding the potential for inconsistent implementation and application of the policy. OSHA agrees that an effective policy can be achieved only through consistent implementation and application. Thus, in the final policy, OSHA has explicitly stated that training will be provided, over a period of time, to all personnel who will apply this policy in order to ensure its consistent and proper implementation.

3. Citation Policy for Violative Conditions Identified and Corrected Through Voluntary Self-Audits

In response to numerous suggestions from commenters, the Agency has added a provision explicitly stating that OSHA will not issue citations for violative conditions discovered during a voluntary self-audit and corrected prior to the initiation of an inspection (or a related accident, illness, or injury that triggers the inspection), even if the violative condition existed within the six month limitations period during which OSHA is authorized to issue citations. OSHA encourages employers to conduct voluntary self-audits and to promptly correct all violations of the Act that are discovered in order to ensure safety and health in the workplace. Thus, in the final policy, the Agency has incorporated its current enforcement practice and will refrain from issuing a citation for a violative condition that an employer discovered as a result of a voluntary self-audit, if the employer corrects the condition prior to the initiation of an OSHA inspection (or a related accident, illness, or injury that triggers the OSHA inspection), and if the employer has taken appropriate steps to prevent a recurrence of the violative condition.

4. Employers' Prerogative to Voluntarily Provide Self-Audit Documentation

Several parties requested that the Agency provide that, in those situations in which the Agency has not requested or used voluntary self-audit documentation in conducting its inspection, employers be permitted to take advantage of the policy by providing the Agency with evidence of their voluntary self-audit program. Since OSHA inspectors rarely request voluntary self-audit

documentation when conducting inspections, and this policy states the Agency's intent that inspectors should request such documentation only in limited situations, OSHA recognizes that there will be a significant number of instances in which the Agency is unaware of an employer's voluntary self-audit activities, and thus the employer would not be considered for recognition under the policy. Therefore, the final policy provides that an employer voluntarily may provide the Agency with self-audit documentation, and the employer may be eligible to receive the benefits that are detailed in this policy.

III. Comments Not Incorporated Into Final Policy

A number of parties offered comments that have not been included in the final policy. While the Agency considered thoroughly each of the comments that it received, OSHA considered the following comments either to be inconsistent with the Agency's dual purposes in proposing the policy or to be beyond the scope of the proposed policy.

1. Employee Participation in the Voluntary Self-Audit Process

Two union representatives maintained that OSHA should require employers to disclose self-audit results to their employees and their representatives and that OSHA should not grant good faith credit to any employer who has not disclosed all of the audit results both to OSHA and to its employees. OSHA agrees that the interests of workplace safety and health are advanced when employers share self-audit results with employees and employee representatives. However, because this is not a rulemaking procedure, the Agency considers it to be inappropriate to use this policy to adopt a practice that may be deemed to modify the legal duties of employers. Moreover, insofar as the purpose of this statement is to clarify current OSHA practices and to provide appropriate, positive treatment that is in accord with the value of voluntary self-audits, the Agency believes that it may be counterproductive to impose additional requirements on employers in order to qualify for inclusion under the policy.

2. More Significant Proposed Penalty Reductions

Several parties suggested that OSHA should provide a more significant proposed penalty reduction for an employer's "good faith" by offering proposed penalty reductions in excess of 25 percent to employers who identify violative conditions during voluntary self-audits and who have begun to correct the conditions, but who have not completed abatement prior to the initiation of an OSHA inspection. OSHA's current guidelines account for an employer's "good faith" when the Agency calculates a proposed penalty for a violation of the Act. These guidelines allow a penalty reduction of up to 25 percent in recognition of an employer's "good faith," if the employer has developed and implemented a written health and safety program, which provides for appropriate management commitment and employee involvement; worksite analysis for the purpose of hazard identification; hazard prevention and control measures; and safety and health training. The Agency has stated that it will treat a voluntary self-audit, which results in prompt corrective action and appropriate steps to prevent similar violations, as strong evidence of the employer's good faith with respect to the matters covered by the voluntary self-audit. However, a voluntary self-audit is only one of the many steps that employers can and do undertake to protect the health and safety of their employees, and OSHA does not believe that the goals of the Act would be furthered by an additional "good faith" penalty reduction that is keyed directly and exclusively to voluntary self-audits. Rather, the Agency believes that its current "good faith" penalty reduction provisions, in conjunction with the inherent advantages that employers gain by

conducting voluntary self-audits and the treatment that this policy provides for voluntary self-audits, provide appropriate, positive recognition for voluntary self-audits.

3. Total Prohibition Against the Use of Voluntary Self-Audit Documentation

Many employers and employer associations stated that OSHA should refrain totally from using voluntary self-audit information as a part of the Agency's enforcement efforts under the Act. The Agency has not incorporated this comment into its policy because it believes that a complete prohibition is unnecessary in order to provide appropriate, positive treatment for voluntary self-audits. In addition, the Agency believes that, in some circumstances, a complete prohibition would prevent it from effectively enforcing the Act.

The implementation of this policy will publicly state the Agency's policy to request voluntary self-audit documentation only in limited situations. A substantial number of employers already conduct voluntary self-audits for their own benefit and for the benefit of their employees. The Agency believes that this policy, with its explicit provisions concerning the Agency's use of voluntary self-audit documentation, will provide the assurances that additional employers may need in order to conduct voluntary self-audits. Indeed, under the policy, employers who respond promptly and appropriately to hazardous conditions that are identified in a voluntary self-audit can only be rewarded for having conducted the self-audit.

On the other hand, there are legitimate circumstances in which voluntary self-audit data are important to enable the Agency to effectively enforce the Act. For example, such information may allow an inspector, who has already identified a hazard, to determine the scope of the hazard or to assess the manner in which the condition can be abated. In addition, pursuant to Occupational Safety and Health Review Commission precedent, the Secretary of Labor has the obligation to demonstrate that an employer had knowledge of a cited violative condition, and, in certain situations, the obligation to demonstrate that an employer was so indifferent to recognized occupational health or safety hazards that more significant penalties are justified in order to effectuate the provisions of the Act. Thus, the Agency believes that a complete prohibition against the use of voluntary self-audit documentation would be an imprudent policy because it would hamper OSHA's ability to enforce the Act effectively.

4. More Precisely Defined Limitations on the Agency's Use of Voluntary Self-Audit Documentation

In the proposed policy statement, the Agency had proposed to "refrain from routinely requesting reports of voluntary self-audits at the initiation of an enforcement inspection." OSHA explained that it intended to seek access to such reports only in limited situations in which the Agency had an independent basis to believe that a specific safety or health hazard warrants investigation, and had determined that such records may be relevant to identify or determine the circumstances or nature of the hazardous condition. However, several employers asked that the Agency more precisely detail the specific situations in which its inspectors may request voluntary self-audit documentation.

The Agency has decided not to attempt to modify its proposed policy in this manner for several reasons. First, OSHA believes that, given the diversity of circumstances that inspectors encounter in conducting thousands of workplace inspections each year, it is not feasible to comprehensively list or to describe with any specificity each of those situations in which it would be appropriate for an inspector to request voluntary self-audit documentation. Rather, the Agency believes that the implementation of this policy will provide sufficient specificity to

assure employers that inspectors will seek voluntary self-audit documentation only in limited and generally defined situations. Second, OSHA recognizes the skill and experience of its inspectors and believes that it is essential for the Agency and its inspectors to have some discretion in implementing this policy in order to effectively and efficiently fulfill the Act's mandate to detect and identify occupational safety and health hazards. Third, in refraining from an attempt to more specifically define those discrete circumstances in which inspectors may request voluntary self-audit documentation, the Agency has adopted the comment offered by several employers and their representatives who expressed concern that such specificity may in practice increase the frequency with which inspectors request voluntary self-audit documentation, given the natural human inclination to interpret specific examples as situations in which a request for self-audit documentation is mandated, as opposed to merely permitted, pursuant to the policy.

5. Adoption of a Formal Rule Regarding the Agency's Treatment of Voluntary Self-Audits

Several commenters suggested that the Agency should adopt the "Final Policy Concerning the Occupational Safety and Health Administration's Treatment of Voluntary Employer Safety and Health Self-Audits" as a formal rule that would be legally binding on the Agency. However, OSHA has declined to incorporate this comment and believes that the policy, as adopted, provides sufficient assurance that employers who conduct voluntary self-audits, and who take prompt and appropriate steps to address occupational hazards that are identified in such audits, will not be penalized by OSHA for conducting voluntary self-audits. In addition, since this policy is an internal policy that is intended only to provide OSHA inspectors with guidance regarding the circumstances under which the Agency considers it appropriate to review and consider documentation generated by employers as a result of voluntary self-audits, the Agency believes it is imprudent and unnecessary to expend the time, money, and other resources required to promulgate a formal rule. Finally, the Agency believes that a rule that creates legal rights for third parties would be more likely to produce unproductive litigation than will a policy that only provides guidance to OSHA inspectors. This type of litigation would not further the health and safety purposes of the Act.

6. No Citation for Partial or Planned Correction of Violative Conditions Identified through a Voluntary Self-Audit

A number of employers stated that the Agency should refrain from issuing a citation in any situation in which an employer has identified a hazardous condition and is in the process of correcting that condition, or has developed a plan or program for correcting that condition, at the time that OSHA conducts an inspection of the employer's facility. OSHA has decided not to incorporate this comment into the final policy for several reasons. First, the agency recognizes that the prompt correction of hazardous workplace conditions is essential for the prevention of occupational illnesses, injuries, and fatalities. The Agency is concerned that a policy that excuses an employer for an abatement plan alone, or for abatement actions that do not constitute the complete elimination of the hazard, may serve to diminish an employer's incentive to promptly and completely eliminate workplace hazards. Second, the Agency believes that such a policy would be inconsistent with the Act's mandate, which is to assure, so far as possible, safe and healthful working conditions for every working man and woman in the Nation. In enforcing the Act, OSHA only issues citations in cases in which employees actually are exposed to hazards associated with violative conditions. While the final policy recognizes that employers who identify hazardous conditions through the use of voluntary self-audits, and are in the process of

correcting those hazards, may deserve a "good faith" reduction in the penalty that OSHA proposes for the violation, the Agency does not believe that the Act contemplates that OSHA will refrain totally from issuing citations in situations in which employees are working in an environment in which they are exposed to serious occupational hazards.

IV. Description of the Final Policy

The policy applies to audits (1) that are systematic, documented, and objective reviews conducted by, or for, employers to review their operations and practices to ascertain compliance with the Act, and (2) that are not mandated by the Act, rules or orders issued pursuant to the Act, or settlement agreements. A systematic audit is planned, and it is designed to be appropriate to the scope of the hazards that it addresses and to provide a basis for corrective action. Ad hoc observations and other ad hoc communications concerning a hazardous condition made during the ordinary course of business are not included within the definition of a "self-audit" or "voluntary self-audit report." The findings resulting from the systematic self-audit must be documented contemporaneously (at the time the condition is discovered or immediately after completion of the audit) so as to assure that they receive prompt attention.

The self-audit also must be conducted by or supervised by a competent person who is capable of identifying the relevant workplace hazards. Employees or management officials who have the training or experience that is necessary to identify workplace safety or health hazards, given the scope and complexity of the processes under review, are considered to be competent persons under the policy, even though they may not maintain engineering, scientific, industrial hygiene, or other relevant professional accreditation.

In order to qualify for inclusion under the policy, a self-audit need not review or analyze an entire plant, facility, or operation. For example, a voluntary self-audit designed to identify hazards associated with a particular process or hazard (as opposed to an entire plant, facility, or operation) will qualify for consideration under the policy.

The policy provides that OSHA will not routinely request voluntary self-audit reports when initiating an inspection, and that the Agency will not use voluntary self-audit reports as a means of identifying hazards upon which to focus during an inspection. Rather, OSHA intends to seek access to such reports only in limited situations in which the Agency has an independent basis to believe that a specific safety or health hazard warrants investigation, and has determined that such records may be relevant to identify or determine the circumstances of the hazardous condition. For example, an inspector might seek access to self-audit documentation following a fatal or catastrophic accident when OSHA is investigating the circumstances of the accident to assess compliance and to assure that hazardous conditions are abated. Likewise, it would be consistent with this policy to request self-audit documentation when the Agency has an independent basis for believing that a hazard exists. The Agency believes that this provision is responsive to the concerns of employers who sought assurances that OSHA would not use voluntary self-audit documentation during an inspection as a "road map" to identify violations of the Act.

OSHA emphasizes that it is not seeking through this policy to expand the situations in which it requests production of voluntary self-audit reports beyond its present practice. In addition, OSHA intends to seek access only to those audit reports, or portions of those reports, that are relevant to the particular matters that it is investigating.

OSHA has defined "voluntary self-audit report" to include information obtained in the audit, as well as analyses and recommendations. The effect is to include audit information in the

documents that OSHA will not routinely request at the initiation of the inspection. OSHA has defined the term this way because the Agency believes that the definition responds to the concerns raised by employers about the effect of routine OSHA requests for voluntary self-audit findings.

The policy also contains provisions designed to assure that employers who respond with prompt corrective actions will receive corresponding benefits following an OSHA inspection. These provisions would come into play when OSHA obtains a voluntary self-audit report, either because the employer has voluntarily provided it to OSHA, as commonly occurs, or because OSHA has required production of the report. In response to public comment, OSHA has expressly stated in the final policy that employers may voluntarily provide OSHA with self-audit documentation and that those employers may be eligible to receive the benefits detailed in the policy.

The policy explains that OSHA will refrain from issuing a citation for a violative condition that an employer has discovered through a voluntary self-audit and has corrected prior to the initiation of an inspection (or a related accident, illness, or injury that triggers the inspection), if the employer also has taken appropriate steps to prevent the recurrence of the condition. In situations in which the corrective steps have not been completed at the time of the inspection, OSHA will treat the voluntary self-audit report as evidence of good faith, not as evidence of a willful violation, provided that the employer has responded promptly with appropriate corrective action to the violative conditions identified in the audit. Accordingly, if the employer is responding in good faith and in a timely manner to correct a violative condition discovered in a voluntary self-audit, and OSHA detects the condition during an inspection, OSHA will not use the report as evidence of willfulness. A timely, good faith response includes promptly taking diligent steps to correct the violative condition, while providing effective interim employee protection, as necessary.

OSHA will treat a voluntary self-audit that results in prompt corrective action of the nature described above and appropriate steps to prevent similar violations, as strong evidence of the employer's good faith with respect to the matters addressed. Good faith is one of the statutory factors that OSHA is directed to take into account in assessing penalties. 29 U.S.C. 666(j). Where OSHA finds good faith, OSHA's Field Inspection Reference Manual (the "FIRM") authorizes up to a 25 percent reduction in the penalty that otherwise would be assessed. The FIRM treats the presence of a comprehensive safety and health program as a primary indicator of good faith. A comprehensive safety and health program includes voluntary self-audits, but is broader in concept, covering additional elements. In this policy, OSHA has concluded that a voluntary self-audit/correction program is evidence of good faith. OSHA believes that the policy will provide appropriate positive recognition of the value of voluntary self-audits, while simultaneously enabling the Agency to enforce the provisions of the Occupational Safety and Health Act effectively.

V. Final Policy Concerning the Occupational Safety and Health Administration's Treatment of Voluntary Employer Safety and Health Self-Audits

A. Purpose

1. This policy statement describes how the Occupational Safety and Health Administration (OSHA) will treat voluntary self-audits in carrying out Agency civil enforcement activities. Voluntary self-audits, properly conducted, may discover conditions that violate the Occupational

Safety and Health Act (Act) so that those conditions can be corrected promptly and similar violations prevented from occurring in the future. This policy statement is intended to provide appropriate, positive treatment that is in accord with the value voluntary self-audits have for employers' safety and health compliance efforts, while also recognizing that access to relevant information is important to the Secretary of Labor's inspection and enforcement duties under the Act.

2. This policy statement sets forth factors that guide OSHA in exercising its informed discretion to request and use the information contained in employers' voluntary self-audit reports. All OSHA personnel applying this policy will receive instruction in order to ensure the consistent and appropriate application of the policy. The policy statement is not a final Agency action. It is intended only as general, internal OSHA guidance, and is to be applied flexibly, in light of all appropriate circumstances. It does not create any legal rights, duties, obligations, or defenses, implied or otherwise, for any party, or bind the Agency.

3. This policy statement has four main components:

(a.) It explains that OSHA will refrain from routinely requesting reports of voluntary self-audits at the initiation of an enforcement inspection;

(b.) It explains that OSHA will refrain from issuing a citation for a violative condition that an employer has discovered through a voluntary self-audit and has corrected prior to the initiation of an OSHA inspection (or a related accident, illness, or injury that triggers the inspection), if the employer also has taken appropriate steps to prevent the recurrence of the condition;

(c.) It contains a safe-harbor provision under which, if an employer is responding in good faith to a violative condition identified in a voluntary self-audit report, and OSHA discovers the violation during an enforcement inspection, OSHA will not treat that portion of the report as evidence of willfulness;

(d.) It describes how an employer's response to a voluntary self-audit may be considered evidence of good faith, qualifying the employer for a substantial civil penalty reduction, when OSHA determines a proposed penalty. See 29 U.S.C. 666(j). Under this section of the Act, a proposed penalty for an alleged violation is calculated giving due consideration to the "good faith" of the employer.

B. Definitions

1. "Self-Audit" means a systematic, documented, and objective review by or for an employer of its operations and practices related to meeting the requirements of the Act.

(a.) "Systematic" means that the self-audit is part of a planned effort to prevent, identify, and correct workplace safety and health hazards. A systematic self-audit is designed by or for the employer to be appropriate to the scope of hazards it is aimed at discovering, and to provide an adequate basis for corrective action;

(b.) "Documented" means that the findings of the self-audit are recorded contemporaneously and maintained by or for the employer;

(c.) "Objective" means that the self-audit is conducted by or under the direction of an individual or group of individuals who are competent to identify workplace safety or health hazards, given the scope and complexity of the processes under review.

2. "Voluntary" means that the self-audit is not required by statute, rule, order, or settlement agreement. Voluntary self-audits may assess compliance with substantive legal requirements (e.g., an audit to assess overall compliance with the general machine guarding requirement in 29 CFR 1910.212).

3. "Voluntary self-audit report" means the written information, analyses, conclusions, and recommendations resulting from a voluntary self-audit, but does not include matters required to be disclosed to OSHA by the records access rule, 29 CFR 1910.1020, or other rules.

4. "Good faith" response means an objectively reasonable, timely, and diligent effort to comply with the requirements of the Act and OSHA standards.

C. OSHA's Treatment of Voluntary Self-Audit Reports

1. No Routine Initial Request for Voluntary Self-Audit Reports

(a.) OSHA will not routinely request voluntary self-audit reports at the initiation of an inspection. OSHA will not use such reports as a means of identifying hazards upon which to focus inspection activity.

(b.) However, if the Agency has an independent basis to believe that a specific safety or health hazard warranting investigation exists, OSHA may exercise its authority to obtain the relevant portions of voluntary self-audit reports relating to the hazard.

(c.) An employer voluntarily may provide OSHA with self-audit documentation and may be eligible to receive the benefits that are detailed in this policy.

2. No Citations for Violative Conditions Discovered During a Voluntary Self-Audit and Corrected Prior to an Inspection (or a Related Accident, Illness, or Injury That Triggers the Inspection)

It is OSHA's current enforcement practice to refrain from issuing a citation for a violative condition that an employer has corrected prior to the initiation of an OSHA inspection (and prior to a related accident, illness, or injury that triggers the inspection), if the employer has taken appropriate steps to prevent a recurrence of the violative condition, even if the violative condition existed within the six month limitations period during which OSHA is authorized to issue citations. Consistent with this enforcement practice, OSHA will not issue a citation for a violative condition that an employer has discovered as a result of a voluntary self-audit, if the employer has corrected the violative condition prior to the initiation of an inspection (and prior to a related accident, illness, or injury that triggers the inspection) and has taken appropriate steps to prevent a recurrence of the violative condition that was discovered during the voluntary self-audit.

3. Safe Harbor -- No Use of Voluntary Self-Audit Reports as Evidence of Willfulness

A violation is considered willful if the employer has intentionally violated a requirement of the Act, shown reckless disregard for whether it was in violation of the Act, or demonstrated plain indifference to employee safety and health. Consistent with the prevailing law on willfulness, if an employer is responding in good faith to a violative condition discovered through a voluntary self-audit and OSHA detects the condition during an inspection, OSHA will not use the voluntary self-audit report as evidence that the violation is willful.

This policy is intended to apply when, through a voluntary self-audit, the employer learns that a violative condition exists and promptly takes diligent steps to correct the violative condition and bring itself into compliance, while providing effective interim employee protection, as necessary.

4. "Good Faith" Penalty Reduction

Under the Act, an employer's good faith normally reduces the amount of the penalty that otherwise would be assessed for a violation. 29 U.S.C. 666(j). OSHA's FIRM provides up to a 25 percent penalty reduction for employers who have implemented an effective safety and health program, including voluntary self-audits. OSHA will treat a voluntary self-audit that results in prompt action to correct violations found, in accordance with paragraph C.3. above, and appropriate steps to prevent similar violations, as strong evidence of an employer's good faith with respect to the matters covered by the voluntary self-audit. This policy does not apply to repeat violations.

D. Federal Program Change

This policy statement describes a Federal OSHA Program change for which State adoption is not required; however, in the interest of national consistency, States are encouraged to adopt a similar policy regarding voluntary self-audits.

E. Effective Date

This policy is effective July 28, 2000.

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary for Occupational Safety and Health, US Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, D.C. this 24th day of July, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.